

Appl. No.: 10/016,852
Amdt. Dated: September 9, 2004
Off. Act. Dated: October 8, 2004

AMENDMENT OF DRAWINGS:

The attached 3 sheets of drawings have new page number references (i.e. 1/3, 2/3, 3/3) in the upper margin but are otherwise the same as the drawings as amended. A previous response deleted drawing sheets 4-17 drawn to unelected inventions.

Please replace all 17 sheets of the previous drawings with these 3 drawing sheets which are directed to the elected Consumption Rate Selectable Manufactured Firelog.

Attachment: Replacement Sheets

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REMARKS/ARGUMENTS

Reconsideration of this application is respectfully requested in view of the foregoing amendments and discussion presented herein.

1. **Objection to Drawings.**

Examiner noted that two FIG. 5's existed. However, Applicant can only find this problem in the drawings which existed prior to the submission of formal drawings in Feb. 2002.

Applicant has submitted a new set of drawings comprising three (3) sheets containing FIG. 1 - FIG. 9 for the elected selectable combustion rate firelog. The only changes to these drawings are an updated page reference header (i.e. 1/3, 2/3, 3/3), no new matter has been added.

2. **Replacement Specification.**

The Applicant has submitted a replacement specification showing mark ups of all the changes to the specification from the prior amendment and including the minor specification amendments listed in section 3 below.

3. **Amendment of Specification.**

The specification is amended herein to better focus the specification on the elected invention.

The title has been amended from **~~SYSTEMS AND METHODS OF ENHANCING CONSUMABLE PRODUCTS~~** to the more fitting title for the selected invention of:

CONSUMPTION RATE SELECTABLE MANUFACTURED FIRELOG

The Cross reference has been amended to reflect that the selected invention of the firelog does not depend from the provisional application serial number 60/267,888. That provisional contained elements of the non-elected invention.

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The drawing reference following the abstract was previously amended incorrectly to indicate four drawings were included, this should have been amended to read "three (3)" sheets of drawing.

4. Allowability of Claims 51-58 and 61-62.

The Applicant notes with appreciation the Examiner's determination that Claims 51-58 and 61-62 are allowable..

5. Allowability of Claims 2-4, 6-12, and 60 if rewritten.

The Applicant notes with appreciation the Examiner's determination that Claims 2-4, 6-12, and 60 would be allowable if rewritten in independent form to include all the limitations of the base claim and any intervening claims.

In response, the Applicant has created a number of new independent claims {63, 64, 66, 71, 74, and 79} incorporating the elements of some of these allowable dependent claims.

Therefore, the above independent claims, as well as new dependent claims added thereto, are now in a condition for allowance.

6. Rejection of Claim 14 under 35 U.S.C. §102(b).

Claim 14 has been rejected under 35 U.S.C. §102(b) based on the patent of Chandaria (U.S. Pat. No. 5,958,090).

In the rejection it is put forth that since Chandaria teaches a firelog that "may be severed or snapped apart and burned as separate parts" that this equates to the elements recited in Applicants Claim 14.

After carefully considering the grounds for rejection the Applicant responds as follows.

Claim 14. This is an independent claim drawn to the embodiment shown in FIG. 7 through FIG. 9. The differences between the Applicant's inventive nested

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combination and the breakable log 10 of Chandaria '090 are clear from the drawing figures, as well as the text. The Applicant has amended Claim 14 to more clearly bring out these differences.

First, the Applicant has amended the preamble in Claim 14, to eliminate the limitation of "surrounded by a flammable wrapper". In writing the preamble the Applicant was directing the claim at all prior art firelogs which were made with a wrapper. Chandaria '090 clearly does not fall under that category, and it is apparent that putting a wrapper over the breakable log of Chandaria '090 would not produce useful results. The wrapper would have to be cut open, destroying its function of retaining particles as well as aromatic gasses, before the log could be broken which is definitely a messy procedure that would then be unprotected by a wrapper.

As the rejection 'ignored' this limitation in the preamble the Applicant has removed that limitation from the preamble and moved it into the body of the claim. An element of the claim now recites "surrounding each complementary shape with a flammable wrapper;" a step performed after the plurality of separate complementary shapes of the firelog are formed. This change also appears to improve the readability of the amended claim.

Secondly, the first limitation has been rewritten in a more concise claim language which clearly lends patentable weight. This second element now recites:

"a plurality of separate complementary shapes configured for arrangement in a nested combination during burning;"

(a) The firelog is formed as a plurality of separate complementary shapes. Such is not the case with the firelog taught by Chandaria '090, as it is not provide a plurality of "separate" shapes. It is also stretching it to consider that breaking the single piece log of Chandaria into two forms two "complementary" sections. The definition of "complementary" from the Webster's Unabridged Dictionary is given as "*forming a complement, completing*". And the base term complement is defined as "*either of two parts or things needed to complete the whole; counterpart*".

(b) This first element of the claim goes on further to describe in more detail the nature of the complementary shapes as: "configured for arrangement in a nested combination during burning;".

This phrase clearly distinguishes over Chandaria '090 as it describes a shape limitation not found in the relied upon reference. In this element of Applicant's claim the term "nested" has a clear meaning which builds on the term "complementary shape" already brought out in the claim.

It should be recognized that there is no lack of clarity with the term "nested". It has a clearly understood meaning. A definition for the term "nest" from the Webster's Unabridged Dictionary is: *"an assemblage of things lying or set close together, as a series of boxes or trays, that fit within each other: a nest of tables."* The term "nested" is also found in the same dictionary as a mathematical term: *"An ordered collection... having the property that each set is contained in the preceding set..."*.

It would be readily appreciated by one of ordinary skill in the art that by creating a nested combination of firelog sections that the surface-to-volume ratio during combustion can be dramatically altered. In the cross-sections shown in FIG. 7 - 9, it is seen that simultaneously burning the sections of FIG. 7 and FIG. 8 in an un-nested configuration results in a much higher surface to volume ratio than burning the nested combination of sections shown in FIG. 7 and FIG. 8 as seen in FIG. 9. Reference to this aspect is brought out on Page 37, lines 8-11: *"It will be appreciated that utilizing multiple conventional firelogs, has little impact on the duration of the fire, as the surface area of the firelogs which is exposed to the flame is independent of the number of firelogs placed in the fire."* These points are also brought out on Page 11, line 19 through page 12, line 12:

"Another aspect of the invention is the adaptation of the shapes of the firelogs so that they may be utilized either separately or in combination with one another. By configuring the firelogs in this way the consumer may elect the size and duration of the fire they wish to burn at a particular time. They may use the separate sections for small

fires of various short durations, or combine the sections in predetermined ways to burn a fire of extended duration or extended heat production. By way of example, a large wrapped firelog is configured for receiving a smaller wrapped firelog, wherein either the smaller or larger firelog may be burned separately, or the two firelogs may be burned in the predetermined combination. It is preferable that the large and small logs be nested and attached to one another with a temporary attachment means, such as a conventional low-tack adhesive, which allows the firelogs to be separated without removing the wrappers. These "combinable firelogs" may be sold in boxes like traditional firelogs and they allow the consumer a choice as to the burn times and heat generated by the fire. It will be appreciated that this aspect of the invention may be combined with the firelog segmentation described above and the burning rate selectable shields wherein the consumer gains additional control over the burn rate of the firelogs."

The benefits are further enhanced as the volume of the log sections shown in FIG. 7 and FIG. 8 differ allowing the user greater flexibility with regard to selecting the size and duration of the fire.

(c) The last element of the claim describes the nexus of the prior elements, the purpose behind configuring the firelogs in a nested configuration is clearly brought out.

In order to support an anticipation rejection, every claim element must be taught or inherent in a single prior art reference, Manual of Patent Examining Procedure (MPEP) §706.02a. The amended claims are not anticipated therefore by the relied-upon references."

Consequently, amended Claim 14 is clearly not anticipated by the Chandaria '090 reference as there exists no teaching of separate complementary shapes, the wrapping of these separate complementary shapes, or the shape configuration which allows the separate shapes to be nested.

Therefore, Applicant respectfully asserts that the presently claimed invention

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described by independent Claim 14 is patently distinct from the cited reference, and the Applicant therefore requests that the present rejections be withdrawn and the instant application passed to allowance.

7. Obviousness Considerations for amended Claim 14.

It has been shown above that amended Claim 14 is not anticipated by the Chandaria '090 reference. This section demonstrates that independent Claim 14 is also not obvious in view of the Chandaria reference or any combination of the references cited in the application.

The subject matter of Claim 14 would not be obvious to a person having ordinary skill in the art in view of Chandaria '090 or any of the other cited references in combination. None of the references cited by the Examiner, nor the combination thereof, suggests, teaches or provides motivation for the separate wrapped firelog sections whose shape is configured for a nested combination during burning.

Therefore, since there is no suggestion, teaching or motivation which can be found in these references from which a person having ordinary skill in the art would find it obvious to modify the manufactured firelogs to correspond to that described in the Applicant's Claim 14, Claim 14 recites structure which is not obvious in view of the references.

8. Rejection of Claim 59 under 35 U.S.C. §112.

Claim 59 has been rejected under 35 U.S.C. §112 first paragraph.

Claim 59. This claim depends from dependent claim 5 and originally from Claim

1. It has been amended to remove the phrase "~~and/or the area of the firelog covered by the shield means when the shield means is configured with a user selectable size~~" to which the objection was directed.

This claim should now be in a condition for allowance.

9. Rejection of Claim 1 and 5 under 35 U.S.C. §112.

Claims 1 and 5 have been rejected under 35 U.S.C. §112 second paragraph, for a lack of clarity.

Claim 1. This independent claim has been amended to correct the missing word in line 15 as follows: "wherein burning of said combustible firelog with said combustion shield retained on an upper portion of said combustible firelog..."

Claim 5. This independent claim has been amended to clarify the last three lines. A new phrase was added to clarify the operation of the selective shielding means and dividing up the last three lines. The last line now clearly indicates how selection of the shielding arises.

"wherein said selective shielding means is configured to selectively change the combustion rate of said firelog by restricting the airflow reaching portions of the surface of the firelog;

wherein a user can select the amount of shielding in response to user selection of the surface area of said shielding which is retained under said firelog."

10. Amendment of Claims 1, 5, 12, 14 and 59.

Claim 1. This independent claim was amended to insert the missing word "portion". Support is found in the other claims, figures, and the specification.

Additionally, the line in Claim 1 stating "*said combustion shield being of a fireproof, or fire retardent, material;*" has been amended to "*wherein said combustion shield comprises a fire proof or fire resistant material*";.

The use of the term "fire resistant" from Claim 6 being considered more clear than "fire retardent", while the structure of the sentence is more in keeping with proper claim practice.

Claim 5. This independent claim was amended to clarify the last claim element, which has been split into two separate claim elements with clarification added:

"wherein said selective shielding means is configured to selectively change the

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combustion rate of said firelog by restricting the airflow reaching portions of the surface of the firelog;

wherein a user can select the amount of shielding in response to user selection of the surface area of said shielding which is retained under said firelog."

Support for the amendment is found in existing claims 1, 6, 51, 59, etc, as well as in the figures and specification.

Claim 12. This dependent claim was amended to utilize a preferred claim format, but does not change the scope or meaning of the claim.

Claim 14. This independent claim has been amended to describe claim limitations with greater particularity.

The limitation of surrounding each complementary shape with a flammable wrapper has been moved down from the preamble of the claim. Additional specifics have been incorporated such as specifying "a plurality of separate complementary shapes" which is seen in FIG. 7-9 and described on page 37, lines 6-21 on the original application.

Claim 59. This claim depends from Claim 5. The last portion of this claim has been deleted as it was unclear, and Applicant found it to be unnecessary to understanding of the invention.

11. Addition of Claims 63 - 84.

As Claims 2-4, 6-12, and 60 were considered allowable if rewritten in independent form, the applicant has created a number of new independent claims based on those claims. In addition, dependent claims have been added to the majority of these independent claims as copied from existing dependent claims. It will be noted that the Applicant having originally paid for 50 total claims and 12 independent claims, would appreciate the Examiner's indulgence that some good use be made of these claims by providing a range of claims based on these claims considered allowable. These claims are not duplicitous as each has a different independent base claim.

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Furthermore, Applicant has added independent Claims 81 and 83 which recite the elements of Claim 14 in a non-Jepson manner, with Claim 83 having more details on the burning combinations. These claims provide an additional recitation of these elements that are not tied to the Jepson claim format.

Claim 63. This independent claim comprises a combination of amended Claim 1 and Claim 2. The preamble was slightly altered for a better fit with the invention title. The preamble was amended to: "A manufactured firelog having a selectable combustion rate", which also comports more closely with the "selectable" recitations in the claim body. The preambles were changed for all of these claims based on Claim 1 or 5.

Claim 64. This independent claim depends from Claim 63 (Claim 1 + Claim 2) and includes the first element of existing Claim 3 describing that the shield is configured to allow for full or partial removal.

Claims 65, 70, 73, 78. These new dependent claims recite a mechanism for removing all or a portion of the combustion shield as described in existing Claim 4, and depend from separate independent claims.

Claim 66. This independent claim comprises a combination of amended Claim 5 and the first two elements of Claim 6.

Claims 67, 72, 75. These new dependent claims recite a "metallic foil" combustion shield as recited in dependent Claim 7, and depend from separate independent claims.

Claims 68, 76. These new dependent claims recite attachment of the combustion shield to the surface of said firelog as recited in dependent Claim 10, and depend from separate independent claims.

Claims 69, 77. These new dependent claims recite attachment of the combustion shield to a flammable wrapper as recited in dependent Claim 11, and depend from separate independent claims.

Claim 71. This independent claim comprises a combination of amended Claim 5 with Claim 6 and Claim 10.

Claim 74. This independent claim comprises a combination of amended Claim 5 with Claim 59.

Claim 79. This independent claim comprises a combination of amended Claim 5 with Claim 59 and Claim 60.

Claims 80, 82, 84. These new dependent claims recite the "means for separably adhering" as recited in allowed dependent Claim 62, slightly reworded to match the form of base Claim 14. These dependent claims depend from base Claims 14, 81 and 83 respectively.

Claim 81. This independent claim comprises Claim 14 put into a non-Jepson format. Details about the relationship of the flammable wrappers to the combination were added to increase claim clarity.

Claim 83. This independent claim also comprises the non-Jepson version of Claim 14, as in Claim 81, but includes specific recitations about the different heat outputs from burning the different combinations.

The small and large portions recited are shown in FIG. 7 and FIG. 8 respectively, and described in the specification at page 37, lines 11-13: *"FIG. 7 depicts a small firelog 80 with a wedge-shaped cross-section, which is configured for nesting within a larger firelog 82 shown within FIG. 8 to create a combination firelog as shown in FIG. 9."*

The use of them separately or in combination is also described at page 37, lines 13-15: *"The firelogs created in combinable shapes can be burned separately or combined into the larger shape of FIG. 9, depending on the desired duration and/or heat output."*

These burning combinations are also taught on page 11, line 19 through page 12, line 12:

"Another aspect of the invention is the adaptation of the shapes of the firelogs so that they may be utilized either separately or in combination with one another. By

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configuring the firelogs in this way the consumer may elect the size and duration of the fire they wish to burn at a particular time. They may use the separate sections for small fires of various short durations, or combine the sections in predetermined ways to burn a fire of extended duration or extended heat production. By way of example, a large wrapped firelog is configured for receiving a smaller wrapped firelog, wherein either the smaller or larger firelog may be burned separately, or the two firelogs may be burned in the predetermined combination. It is preferable that the large and small logs be nested and attached to one another with a temporary attachment means, such as a conventional low-tack adhesive, which allows the firelogs to be separated without removing the wrappers. These "combinable firelogs" may be sold in boxes like traditional firelogs and they allow the consumer a choice as to the burn times and heat generated by the fire. It will be appreciated that this aspect of the invention may be combined with the firelog segmentation described above and the burning rate selectable shields wherein the consumer gains additional control over the burn rate of the firelogs."

12. Additional Claim fees.

The application as originally filed included payment for fifty (50) total claims and twelve (12) independent claims. The total number of claims currently pending is forty four (44) total claims inclusive of twelve (12) independent claims {1,5,14,51,61,63, 66,71,74 ,79,81,83}. Thereby the total number of pending claims is still below 50 and the number of independent claims is now equal to those originally paid for.

Therefore, no additional claim fees are due.

13. Response Timing.

This response has been made within a two month period after the mailing date of the action. Applicant appreciates Examiner consideration of the remaining issues in preparation for moving the case to issue.

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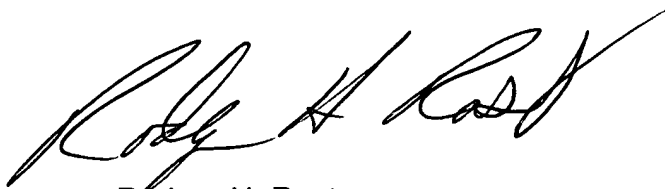
14. Conclusion.

The amendment modifies, and/or adds, a number of claims within the present application. Each of these presently pending claims in this application are believed to be in immediate condition for allowance.

The Applicant respectfully requests a interview by phone with the Examiner upon reviewing this response to clear up any remaining issues prior to issuance of a notice of allowance.

Date: October 8, 2004

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rodger H. Rast", written in a cursive style.

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